IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 105 OF 2005

Smt.Housabai Haribhau Bahirat & ors. ... Appellants.
Versus.
M/s.Jewel Housing. ... Respondents.

Shri G.S.Godbole for the Appellants.

Shri Mustafa Motiwala for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 7th February, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The challenge by the Plaintiffs/Appellants in this Appeal is to the order dated 20th November 2004 passed by the learned trial Judge by which the application for temporary injunction at Exh.5 was rejected by the trial Court. While rejecting the Application, the learned trial Judge directed the Respondents to deposit a sum of Rs.50 lakhs in the trial Court within a period of one month from the date of the said order. It is not in dispute that the said amount has been deposited by the Respondents.

2. Shri Godbole, the learned Counsel appearing for the Appellants submitted that the Respondents have sold as many as 7 flats on the basis of the authority purportedly granted by the Appellants to the Respondents and have collected a sum of about Rs.1.77 crores. He

submitted that the flats are sold only on the basis of the alleged authority letter issued by the Appellants to the Respondents. He submitted that the Appellants are disputing the authority of the Respondents to sell the seven flats which are admittedly sold by the Respondents. He submitted that without the Respondents paying the entire amount of sale proceeds received by them by way of sale of the said flats, the Respondents cannot proceed with the further construction and cannot part with the possession of the flats in favour of any third party. He, therefore, submitted that the learned trial Judge should have granted injunction as prayed. He submitted that in any event the learned trial Judge should have directed the Respondents to deposit the entire amount received by the Respondents by sale of the said seven flats.

3. The learned Counsel appearing for the Respondents has tendered an affidavit sworn by the Respondent No.1B. In the said affidavit he has stated in paragraphs Nos.2 to 4 as under:

> 2. I say that the Respondents are ready and willing and have always been ready and willing to hand over possession to the Appellants of the said 4 flats viz. flats bearing nos.302, 402, 803 and S01 in Building "C".

3. I say that the Respondents will furnish a Bank Guarantee in the sum of Rs.45 lakhs within a period of four weeks from today and which guarantee shall be kept alive pending the hearing and final disposal of the Special Civil Suit No.1022 of 2004 filed in the Court of the Civil Judge, Senior Division, Pune at Pune.

4. I say that the said Bank Guarantee is being given by the Respondents as and by way of security for the alleged claim of the Appellants in the Special Civil Suit No.1022 of 2004. I say that the Bank Guarantee is being given by the Respondents without prejudice to their contentions that no amounts are due and payable to the Appellants by the Respondents in the Special Civil Suit No.1022 of 2004.

The learned Counsel for the Respondents submitted that a stand was taken in the trial Court that all the flats in Building "C" save and except 4 flats referred to in para 2 of the said affidavit were already sold and possession thereof was handed over to the prospective purchasers. He stated that as set out earlier in paragraph 3, the Respondents have stated that they will furnish the Bank

Guarantee in the sum of Rs.45 lakhs within a period of four weeks from today and the guarantee shall be kept alive pending the hearing and final disposal of the suit.

4. The learned Counsel appearing for the Respondents submitted that considering the prayer clause (a), of the Application at Exhibit 5 which is the only prayer made in the Application Exh.5, no further relief can be granted as possession of all the flats save and except the four flats in Building "C" has been handed over.

5. I have considered the rival submissions. Prayer (a) of the Application Exh.5 reads thus:

> (a) The Defendants may kindly be restrained by an order of temporary injunction from handing over the possession of respective flats in building No.(C) to any prospective flat purchaser unless and until possession of the flats Nos.302, 402, 902, 1002, and 803 that is retained by the plaintiffs is given to the plaintiffs and the amount of Rs.1,74,64,000/- and Rs.7,00,000/- towards parking, kept by the defendant with himself is paid to the plaintiff, till the final hearing and disposal of

the present suit.

A stand was taken in the trial Court in the reply filed by the Respondents to the application for temporary injunction that the possession of all the flats in the building "C" has been handed over to the prospective purchasers. The same stand is reiterated in the affidavit of Respondent No.1B filed today in this Court.

6. Relief which is essentially claimed in prayer clause (a) is that the possession of the flats in building "C" should not be handed over to the prospective purchasers unless and until the amounts of Rs.1,74,64,000/- and Rs.7,00,000/- are paid to the Appellants or till final disposal of the suit. There is nothing on record to disbelieve the statement of the Respondents in the reply filed in the trial Court as well as the statement made in paragraph 1 of the affidavit filed today. In view of this position, prohibitory injunction as prayed for in prayer clause (a) of the Application Exh.5 cannot be granted. As the prayer made therein is confined to the flats in Building "C", the same cannot be granted. Shri Godbole made a grievance that now the Respondents are intending to start construction on the remaining plot. As no prayer is made before the trial Court in application at Exh.5 regarding temporary injunction in respect of the remaining portion of the plot, I am not recording any finding in so far as the said grievance

made by Shri Godbole as regards the remaining part of the property is concerned. It is for the Appellants to take out appropriate proceedings in that behalf.

7. The statement made by the Respondents in paragraph 3 of the affidavit tendered today is accepted. As regards the statement made in paragraph 2 of the said affidavit, it is for the Appellants to accept the suggestion made in paragraph 2. At this stage, the learned Counsel appearing for the Respondents stated that if the Appellants do not take possession of the four flats as mentioned in paragraph 2 of the affidavit, the Respondents will keep the said flat unalienated till disposal of the sit. This statement is accepted.

8. In view of what is stated above and the statements in the affidavit filed today, there is no merit in the Appeal. Subject to the observations made above, the Appeal is dismissed with no order as to costs.

9. Hearing of the suit before the trial Court is expedited. The learned trial Judge is directed to dispose of the suit as expeditiously as possible and preferably before 31st December 2005.

Judge.